

**IN THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN  
DISTRICT OF OHIO  
EASTERN DIVISION**

<b>RAY CARTER, NATHAN DUNKLE,</b>	:	
<b>AND JASON BORDEN <i>et al.</i></b>	:	
	:	<b>Case No. 2:19-cv-1632; 17-cv-1110</b>
<b>On behalf of themselves and</b>	:	
<b>Other members of the</b>	:	<b>Chief Judge Algenon L. Marbley</b>
<b>general public</b>	:	
<b>similarly situated,</b>	:	<b>Magistrate Judge Chelsey M. Vascura</b>
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>OHIO MULCH SUPPLY, INC., <i>et al.</i></b>	:	
	:	
	:	
<b>Defendants.</b>	:	

**OPINION & ORDER**

This matter is before the Court on the Parties’ Joint Motion for Final Approval of FLSA Settlement pursuant to § 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b). (“Joint Motion”). (ECF No. 83). For the reasons stated below, this Court **GRANTS with modifications** the parties’ motion for final approval.

On April 26, 2019, Plaintiff Ray Carter, Nathan Dunkle, and Jason Borden filed the instant action on behalf of themselves and others similarly situated (“Plaintiffs”) against Defendants Ohio Mulch Supply, Inc. and Jim Weber, II (collectively, the “Defendants”), alleging that Defendants violated the Fair Labor Standards Act (“FLSA”) by failing to pay employees for the time they worked at Ohio Mulch Supply, Inc. On December 18, 2017, Plaintiff Diane Smyers also filed an action on behalf of herself and other similarly situated, in related case 17-cv-1110.

On June 4, 2020, the parties reported to the Court that they had reached a settlement. The parties thereafter filed a joint motion to consolidate their cases for settlement (ECF No. 82), which this Court granted on June 9, 2020. The parties then jointly moved to approve that settlement agreement. (ECF No. 83).

After holding a status conference with the Parties, this Court will exercise its discretion to apply the percentage-of-the-fund method, rather than the lodestar method. Accordingly, 54 Plaintiffs (both representatives and opt-ins) will receive an aggregate amount of \$63,333.33 for their unpaid wages. Counsel for Plaintiffs is set to receive an attorneys' fees award of \$31,666.66. Representative Plaintiff Smyers is set to receive a Service Payment of \$3,000, in addition to her individual payment, for her services provided in this matter on behalf of the class.

On August 2, 2020 this case was consolidated with 17-1110 for settlement purposes. (ECF No 84 in 17-1110). This Court has issued an Opinion & Order on the Parties' Joint Motion for Final Approval of FLSA Settlement pursuant to § 16(b) of FLSA for 17-1110. That Opinion & Order is incorporated in full here.

For the reasons stated herein, the Court **GRANTS with modifications** the Joint Motion for Settlement Approval (ECF No. 83).

**IT IS SO ORDERED.**



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ALGENON L. MARBLEY  
CHIEF UNITED STATES DISTRICT JUDGE

**DATE: December 4, 2020**